

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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MAY 18 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0177
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
STEVEN MICHAEL MAYNES,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200800090

Honorable James L. Conlogue, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and David A. Sullivan

Tucson
Attorneys for Appellee

Joel A. Larson, Cochise County Legal Defender

Bisbee
Attorney for Appellant

K E L L Y, Judge.

¶1 Following a jury trial, Steven Maynes was convicted of burglary of a non-residential structure. The trial court sentenced him to a slightly mitigated term of two years' imprisonment, to be served consecutively to his sentence for a separate conviction

in Pima County. On appeal, Maynes contends the trial court abused its discretion by denying his motion for judgment of acquittal, made pursuant to Rule 20, Ariz. R. Crim. P.

¶2 A trial court must grant a Rule 20 motion “if there is no substantial evidence to warrant a conviction.” Ariz. R. Crim. P. 20(a). Substantial evidence is that which reasonable minds could consider sufficient to establish the defendant’s guilt beyond a reasonable doubt. *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). Thus, “[i]f reasonable minds could differ as to whether the properly admitted evidence, and the inferences therefrom, prove all elements of the offense, a motion for acquittal should not be granted.” *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). We review the trial court’s decision de novo, but we “view[] the evidence in a light most favorable to sustaining the verdict.” *Id.*

¶3 The evidence at trial established that the victim had parked his car in a Sierra Vista mall parking lot, locked the doors, and left the window “cracked” open approximately half an inch while he went inside the mall. He returned to the vehicle approximately half an hour later and found the window “cracked a little bit more” than he had left it, the driver’s side door unlocked, and his iPod and camera missing from the vehicle’s console. He called police and an officer “lifted” latent fingerprints from the inside of the vehicle’s window. An Arizona Department of Public Safety criminalist testified that the fingerprints matched those on file in the state’s fingerprint computer database for an individual named Steven Michael Maynes. The “live scan fingerprint

card,” obtained from the database by the criminalist and admitted into evidence, included Maynes’s date of birth and physical description.

¶4 Following the state’s presentation of evidence, Maynes moved for a judgment of acquittal, arguing the state had failed to present “evidence that Mr. Maynes had ever actually taken anything from the vehicle in this matter.” The trial court denied the motion. Maynes contends on appeal that the trial court improperly denied the motion because “[t]here was no evidence presented that the [defendant] Maynes . . . was the same Steven Maynes whose prints” had been matched to those on the victim’s vehicle.

¶5 We find no error in the trial court’s ruling. Reasonable minds could differ as to Maynes’s culpability given the evidence described above. Moreover, as the state points out, Maynes essentially admitted during his own testimony that the fingerprints on the victim’s vehicle were his, claiming his “only idea [of] how this could have happened” was that he had grabbed the window of the victim’s vehicle to steady himself after he had parked his own car in the parking lot. “After making and losing a motion for a directed verdict, a defendant has the choice of resting on the motion or proceeding with his case. If he proceeds, he runs the risk of curing any deficiency in the state’s case through introduction of his own evidence.” *State v. Eastlack*, 180 Ariz. 243, 258, 883 P.2d 999, 1014 (1994) (citation omitted); *see also* Ariz. R. Crim. P. 20, cmt. (upon denial of motion for judgment of acquittal “the defendant must decide whether or not to defend himself affirmatively”); *State v. Villegas*, 101 Ariz. 465, 467, 420 P.2d 940, 942 (1966) (“[E]rror, if any, in not directing a verdict at the close of the State’s case, was waived by appellant’s proceeding with his case . . .”).

¶6 Maynes's conviction is supported by sufficient evidence. The conviction and Maynes's sentence are affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge